

Section III:
AMENDMENT UNDER 37 CFR §1.121 to the
DRAWINGS

No amendments or changes to the Drawings are proposed.

Section IV:
AMENDMENT UNDER 37 CFR §1.121
REMARKS

Withdrawal of Rejections

Applicant appreciates withdrawal of the previous final rejections.

Rejections under 35 U.S.C. §102(e)

In the Office Action, claims 1 - 5, 10 - 15, 20 - 25, and 30 were rejected under 35 U.S.C. §102(e) for lack of novelty as being anticipated by U.S. Published Patent Application to Geiger et al. (hereinafter "Geiger").

Shopping Cart-mounted Display vs. Display Mounted on or near the Retail Fixture

Geiger is directed towards a device for alerting a consumer to the presence of a product which may meet the consumer's preferences (or which simply may be on promotion), the device being mounted to a shopping cart. This is useful in shopping spaces and showrooms where shopping carts are prevalent, but is of questionable use due to its size and weight in a showroom where no shopping cart is provided. Applicant's example of a shoe store is such a space where no shopping cart may be provided.

Applicant's invention takes a fundamentally different form in that the device for alerting the consumer to the product on the shelf or table is mounted near or on the shelf or table - not on a shopping cart. This allows installation and use of applicant's invention in all showrooms having retail display fixtures. It also may have cost advantages compared to Geiger's system, whereas Geiger's shopping-cart-mounted system comprises a small computer, and applicant's system comprises simpler electronics.

Applicant has amended the independent claims to specify that the alerting mechanism and the consumer identification unit are positioned statically with the retail display fixture, not moving with the consumer or a consumer-operated shopping cart. Please note that in the amended claims, the consumer identification unit is specified as being mounted on or near the retail fixture (not on a shopping cart), that the identification operation occurs responsive to the consumer moving towards the retail fixture, and thereby towards the consumer ID unit. Further,

since applicant has claimed that the display unit (e.g. the alerting mechanism) is mounted on or near the retail display fixture, then by mechanical coupling to the position of the retail fixture, the consumer is also moving towards the display unit (e.g. the display unit is not moving along with the consumer pushing the cart).

Geiger is silent as to relocating their display unit to be mounted on or near the retail fixture, and their described processes rely upon the unit traveling in the retail space with the consumer, not the product. Their "transceiver", which is mounted throughout the show room area near products or retail fixtures does not have a display or audible alert mechanism - these features only exist in their shopping-cart-mounted unit.

Therefore, Geiger fails to teach this aspect of applicant's invention. Further, it would not have been obvious to modify this aspect of Geiger's system to correspond with applicant's form whereas it would change a principle of operation of Geiger's invention. (MPEP §2143.01)

Point of Identification of the Shopper - Controlled Flow vs. Unrestricted Flow

Geiger's system identifies the consumer once within the retail space using a few consumer identification units, or using a function of the shopping-cart-mounted display unit (e.g. user inputs an ID or swipes a mag-stripe card, etc.).

Applicant's invention, however, identifies the consumer as he or she approaches the retail display fixture where the products on display are located. This is not just a repackaging or redistribution of functionality, but has considerable potential impact on cost and complexity of the overall system, besides those already mentioned in the foregoing paragraphs.

For example, there may be fewer consumer identification units needed in a given retail space than according to the applicant's invention, which could, in some situations, be advantageous. In such a case, the consumer identification units could be located near physical points of access, such as doors and gates. This form, however, does distribute more intelligent requirements onto their display units, which could make the display units more expensive than those of applicant's invention.

Further, consider retail spaces which are open, where flow of consumers is not restricted through doors. For example, such unrestricted consumer flow is seen in central areas of shopping malls, trade show floors in large convention halls, and very large retail stores having multiple departments (e.g. "big box" retailers).

Where would Geiger's consumer identification units be placed in such a scenario?

Applicant's consumer identification units are co-located with activated displays (LED's, spotlights, etc.) as well as being co-located with the actually products on display. Thus, functionality is centralized and co-located with the retail display feature, making applicant's form preferable for such open, unrestricted flow retail spaces.

Geiger is silent as to co-location of the consumer identification unit with the retail display fixture it serves.

Directing the Attention of the User or Consumer Towards the Invention vs. Towards the Product's Location on a Retail Fixture

Geiger's invention alerts the user by providing a message on the display on the handle of the shopping cart, by providing an audible tone, by shaking or vibrating the handle of the shopping cart, or some combination of these. Considering a realistic scenario of usage, a consumer traveling down an aisle on which multiple levels of shelves of products are positioned on both sides of the aisle would be temporarily disoriented upon receiving the product alert. For example, the consumer feels the handle of the cart vibrating, looks down, and reads the message which says "ABC Cereal is 50% off", for example. OK, so where is ABC Cereal? Is it to the right, to the left, forward, behind? And further, is it on a lower shelf, middle shelf, upper shelf?

Geiger's invention provides a certain level of information to the consumer, and alerts the consumer, but does not actually direct the attention of the user to the physical retail fixture (e.g. shelf, stand-out, etc.) where the product is physically located. Instead, Geiger's invention attracts the attention of the user to the invention itself. After reading the message on Geiger's invention, the user must then search for and locate the product to which it is referring.

Geiger is silent as to methods and devices to attract the consumer's attention to the retail display fixture.

Summary of the Amendment to the Claims

In order to distinguish these aspects of the applicant's invention, applicants have amended the claims to specify that the consumer identification unit and the activated display (e.g. LED, spotlight, etc.) are mounted on or near the retail display fixture, as opposed to being affixed to a cart which is mobile and travels with the consumer.

Additionally, the applicant has amended the claims to clarify that the consumer's attention is directed towards the retail display fixture by the activated display, rather than being

directed towards a device mounted on a shopping cart or being held in the hand.

As Geiger is silent regarding all of these elements, steps, and limitations of applicant's claims, allowance of claims 1 - 5, 10 - 15, 20 - 25, and 30 is requested.

Rejections under 35 U.S.C. §103

In the Office Action, claims 6 - 9, 16 - 19, 26 - 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Geiger.

Whereas no secondary reference is proposed in the rationale for these rejections, and whereas these claims incorporate by dependency the elements, steps, and limitations of claims 1, 11, and 21, Geiger fails to teach all of the aspects of claims 6 - 9, 16 - 19, 26 - 29 as discussed in the foregoing paragraphs.

Allowance of claims 6 - 9, 16 - 19, 26 - 29 is requested.

Respectfully Submitted,

/ Robert Frantz /

Robert H. Frantz, Reg. No. 42,553
Agent for Applicant Tel: (405) 812-5613
FRANKLIN GRAY PATENTS, LLC